

### § 113.39

(1) and (2) of this section shall be consistent with the requirements of this section.

[T.D. 84-213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 91-77, 56 FR 46115, Sept. 10, 1991; T.D. 95-77, 60 FR 50020, Sept. 27, 1995; T.D. 99-27, 64 FR 13675, Mar. 22, 1999; T.D. 99-64, 64 FR 43266, Aug. 10, 1999]

### § 113.39 Procedure to remove a surety from Treasury Department Circular 570.

If a port director or Fines, Penalties, and Forfeitures Officer is unsatisfied with a surety company because the company has neglected or refused to pay a valid demand made on the surety company's bond or otherwise has failed to honor an obligation on that bond, the port director may take the following steps to recommend that the surety company be removed from Treasury Department Circular 570.

(a) *Report to Headquarters.* A port director or Fines, Penalties, and Forfeitures Officer shall send the following evidence to Headquarters, Attn: Director, Border Security and Trade Compliance Division.

- (1) A copy of the bond in issue;
- (2) A copy of the entry or other evidence which shows that there was a default on the bond;
- (3) A copy of all notices, demands or correspondence sent to the surety company requesting the honoring of the bond obligation;
- (4) A copy of all correspondence from the surety company; and
- (5) A written report of the facts known to the port director or Fines, Penalties, and Forfeitures Officer showing the unsatisfactory performance by the surety company of the bond obligation(s).

(b) *Review by Headquarters.* The Director, Border Security and Trade Compliance Division, shall review submitted evidence and determine whether further action against the surety company is warranted. If it is determined that further action is warranted, a report recommending appropriate action will be submitted to the Fiscal Assistant Secretary, Department of the Treasury, as required by § 223.18(a), Bureau of Government Financial Operations Regulations (31 CFR 223.18(a)). The port director and Fines, Penalties,

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and Forfeitures Officer will be informed in writing of Headquarters action regarding their request for removal of the surety.

[T.D. 84-213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 91-77, 56 FR 46115, Sept. 10, 1991; T.D. 95-77, 60 FR 50020, Sept. 27, 1995; T.D. 99-27, 64 FR 13675, Mar. 22, 1999]

### § 113.40 Acceptance of cash deposits or obligations of the United States in lieu of sureties on bonds.

(a) *General provision.* In lieu of sureties on any bond required or authorized by any law, regulation, or instruction which the Secretary of the Treasury or the Commissioner of Customs is authorized to enforce, the port director is authorized to accept United States money, United States bonds (except for savings bonds), United States certificates of indebtedness, Treasury notes, or Treasury bills in an amount equal to the amount of the bond.

(b) *Authority to sell United States obligations on default.* At the time of deposit of any obligation of the United States, other than United States money, with the port director or other appropriate Customs officer, the obligor shall deliver a duly executed power of attorney and agreement authorizing the port director or other appropriate Customs officer, as, in case of any default in the performance of any of the conditions of the bond, to sell the obligation so deposited and to apply the proceeds of sale, in whole or in part, to the satisfaction of any damages, demands, or deficiency arising by reason of default. The format of the power of attorney and agreement, when the obligor is a corporation, is set forth below, and shall be modified as appropriate when the obligor is either an individual or a partnership:

#### POWER OF ATTORNEY AND AGREEMENT

#### (FOR CORPORATION)

\_\_\_\_\_, (name of corporation) a corporation duly incorporated under the laws of the State of \_\_\_\_\_, and having its principal office in the City of \_\_\_\_\_, State of \_\_\_\_\_, as authorized by a resolution of the board of directors of the corporation, passed on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, a duly certified copy of which is attached, does constitute and appoint \_\_\_\_\_ (name and official title of bond-approving officer), and his successors in office, as attorney for said corporation, for and in the name

of the corporation to collect or to sell, assign, and transfer the securities described as follows:

The securities having been deposited by it as security for the performance of the agreements undertaken in a bond with the United States, executed on the date of \_\_\_\_\_, 19\_\_\_\_, the terms and conditions of which are incorporated by reference into this power of attorney and agreement and made a part hereof. The undersigned agrees that in case of any default in the performance of any of the agreements the attorney shall have full power to collect the securities or any part thereof, or to sell, assign, and transfer the securities or any part thereof at public or private sale, without notice, free from any equity of redemption and without appraisal or valuation, notice and right to redeem being waived and to apply the proceeds of the sale or collection in whole or in part to the satisfaction of any obligation arising by reason of default. The undersigned further agrees that the authority granted by this agreement is irrevocable. The corporation for itself, its successors and assigns, ratifies and confirms whatever the attorney shall do by virtue of this agreement.

Witnessed, signed, and sealed, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

[Corporate seal.]

By \_\_\_\_\_

Before me, the undersigned, a notary public within and for the County of \_\_\_\_\_, in the State of \_\_\_\_\_ (or the District of Columbia), \_\_\_\_\_ personally appeared \_\_\_\_\_ (name and title of officer) and for and in behalf of said \_\_\_\_\_, a corporation, acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_;.

[Notarial seal.]

Notary Public \_\_\_\_\_

NOTE: Securities must be described by title, date of maturity, rate of interest, denomination, serial number, and whether coupon or registered. Failure to give a complete description will warrant rejection of this power of attorney.

(c) *Application of United States money on default.* If cash is deposited in lieu of sureties on the bond, the port director or other appropriate Customs officer, as appropriate is authorized to apply the cash, in whole or in part, to the satisfaction of any damages, demands, or deficiency arising by reason of a default under the bond.

[T.D. 84-213, 49 FR 41171, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984]

## Subpart E—Production of Documents

### § 113.41 Entry made prior to production of documents.

When entry is made prior to the production of a required document, the importer shall indicate in the “Missing Documents” box (box 16) on Customs Form 7501 the missing document, whether the importer gives a bond or stipulates to produce the document.

### § 113.42 Time period for production of documents.

Except when another period is fixed by law or regulations, any document for the production of which a bond or stipulation is given shall be delivered within 120 days from the date of notice from Customs requesting such document, or within any extension of such time which may be granted pursuant to § 133.43(a). If the period ends on a Saturday, Sunday, or holiday, delivery on the next business day shall be accepted as timely.

[T.D. 85-167, 50 FR 40363, Oct. 3, 1985]

### § 113.43 Extension of time period.

(a) *Application received within time period.* If a document referred to in § 113.42 is not produced within 120 days from the date of the transaction in connection with which the bond was given, the port director, in his discretion, upon written application of the importer, may extend the period for one further period of 2 months.

(b) *Late application.* No application for the extension of the period of any bond given to assure the production of a missing document shall be allowed by the port director if the application is received later than 2 months after the expiration of the period of the bond, and any extension shall not be allowed by the port director for a period of more than 2 months from the date of expiration of the period.

(c) *Acceptance of a free-entry or reduced-duty document prior to liquidation.* When a bond is given for the production of any free-entry or reduced-duty document and a satisfactory document is produced prior to liquidation of the entry or within the period during which a valid reliquidation may be